

**COMPLIANCE BOARD OPINION 01-4**

February 22, 2001

*Mr. Roger W. Strock*  
*Chief*  
*Montgomery County Fire and Rescue Service*

The Open Meetings Compliance Board has considered your complaint regarding several alleged violations of the Open Meetings Act by the Montgomery County Fire Board at meetings held on October 4 and October 18, 2000. For the reasons stated below, the Compliance Board finds that the Fire Board failed to comply with the notice requirements of the Act but in other respects did not violate the Act.

**I**

**Complaint, Response, and Supplemental Response**

Your complaint alleged that at its monthly meeting on October 4, 2000, the Fire Board's Chairman "stated that the Fire Board was going to go into Executive Session in order to discuss 'personnel issues.' The Chairman then asked all non-members of the Fire Board to leave the room." Although your complaint indicated that you advised the Chairman that the impending closed session was illegal,<sup>1</sup> the Fire Board went ahead with it.

Your complaint also stated your understanding "that on October 18, 2000, select members of the Fire Board held a meeting. This meeting was not announced publicly and those select members were notified by pager. It is also my understanding that the meeting was held in a different location than where their other meetings are held."

In a timely response on behalf of the Fire Board, Chairman Andrew B. White acknowledged that the Fire Board is a public body subject to the Act and stated the Board's intention to comply fully with the Act. "However, on October 4, 2000, and October 18, 2000, the Fire Board did not 'meet' within the meaning of the Act."

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<sup>1</sup> As your complaint put it, the Fire Board, an advisory group, "do not have any personnel and, therefore, have no personnel issues to discuss in a closed session."

In support of this assertion about the October 4 meeting, Mr. White reported that “there was no quorum present at the outset of the meeting. If there is no quorum present at a regularly scheduled Fire Board meeting, which happens on occasion, the meeting is continued as a briefing. No motions are entertained and no actions are taken. During the last year there have been three or four occasions when a quorum was not present. The October 4 session was one such occasion.” Mr. White acknowledged that, as the briefing continued with reports from various individuals and committees, “one additional delegate arrived at the session. This was during the time that the reports were being given. At a later point, at least one or more delegates left.”<sup>2</sup> Hence, according to the response, there may have been an ephemeral quorum, but the closed session referred to in the complaint took place *after* the quorum had been lost:

While the minutes refer to an “executive session,” this meeting of less than a majority of the delegates was not an executive session because there was no quorum present. Because there was no quorum present at the time the Fire Board met in closed session, the Act does not apply to the discussion that was held and does not require that the procedures which apply to closing a meeting must be followed.

Likewise, Mr. White reported, the meeting on October 18 “only had 13 delegates present and also is designated a ‘briefing.’” That is, the lack of quorum prevented the conduct of business.

After receipt of Mr. White’s response, the Compliance Board asked that he supplement the response “by describing what, if any, notice was provided prior to these sessions.” In reply to the Compliance Board’s request, Mr. White supplemented his response by describing the method used to notify Fire Board members of meetings: “Several days before each meeting, the secretary in the office of the Montgomery County Fire and Rescue Service assigned to work with the Fire Board sent a reminder notice to each of the members by an internal paging system. This was the notification system used with regard to the October 4 ... as well as the October 18 ... meeting.” Recognizing that this paging system did not afford members of the public notice of the meetings, Mr. White went on to describe the Fire Board’s plan, based on advice from the Montgomery County Attorney’s Office, for giving notice of future meetings: “[T]he Fire Board will be posting notices of its meetings both in the public area at the office of the Montgomery County Fire and

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<sup>2</sup> The term “delegate” refers to a member of the Fire Board, which consists of two delegates and one alternate from each fire department and rescue squad. By-laws, Article II, §1. A quorum of the Fire Board is 19. By-laws, Article VIII.

Rescue Service ... and at the Rockville Volunteer Fire Department on Hungerford Drive where meetings take place. In addition, we are looking into posting notices in the calendar of events section of the Montgomery County Fire and Rescue Service website and in the Montgomery County Boards, Committees and Commissions Meetings Calendar.”

## II

### Analysis

#### A. *Applicability of the Act*

Your complaint alleged a wide range of violations, including failing to provide proper notice of the meetings, unlawfully closing the meeting on October 4, failing to comply with the Act’s procedures for closing a meeting, and failing to disclose certain information about the October 4 meeting. With the exception of the issue about notice, which we shall address below, these compliance questions are rendered moot by the absence of a quorum.

The Open Meetings Act applies only to the “meetings” of a public body. A meeting occurs when a quorum of a public body is convened for the consideration or transaction of public business. §10-502(g) of the State Government Article. A quorum is a majority of the public body’s membership, unless some other provision of law specifies a different number. §10-502(k). As we have often held, the Act does not apply to a discussion among members of a public body if no quorum is present. *See, e.g.,* Compliance Board Opinions 99-6 (June 22, 1999), *reprinted in 2 Official Opinions of the Open Meetings Compliance Board* 49, and 96-1 (March 4, 1996), *reprinted in 1 Official Opinions Open Meetings Compliance Board* 151.

The minutes of the October 4 meeting reflect that “no quorum [was] present at the start of the meeting” but that “a quorum was present for a portion of the meeting.” Once a quorum was present, the Act applied to the session from that point until, as evidently happened, the quorum was lost when some delegates left. The minutes also evidenced the fact, however, that a quorum was *not* present during consideration of old business, prior to the time when the remaining delegates met in closed session. Because no quorum was present at that time, the closed-session discussion was not a “meeting” of the Fire Board subject to the Act. Therefore, noncompliance with the substantive or procedural requirements of the Act was not a violation.

The same analysis applies to the October 18 gathering of Fire Board delegates. Because, according to Mr. White's response, only thirteen delegates were present - six short of the number required for a quorum - the gathering was not a meeting subject to the Act.

***B. Public Notice***

The Fire Board's practices regarding notice of its meetings were inconsistent with the Act. Evidently, the Fire Board routinely provided no public notice at all of its future meetings. Although the Act affords a public body broad latitude about the means of notice, some means reasonably calculated to inform interested citizens of forthcoming meetings must be used. §10-506.

Although the Fire Board experienced situations when a scheduled "meeting" devolved into a mere "briefing" because the anticipated quorum did not materialize, as on October 18, surely these situations could not be predicted in advance. Indeed, on October 4 the brief presence of a quorum resulted in the occurrence of a "meeting" for which public notice was required. The Fire Board should have provided adequate advance public notice for all of its scheduled meetings and violated the Act by failing to do so. The Compliance Board is pleased to note that, with the assistance of the County Attorney's Office, the Fire Board is reforming its practices so as to comply with this aspect of the Act.

OPEN MEETINGS COMPLIANCE BOARD

*Walter Sondheim, Jr.*  
*Courtney McKeldin*  
*Tyler G. Webb*